

HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 25

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

AN ACT

RELATING TO HOUSING; ENACTING THE AFFORDABLE HOUSING ACT TO
IMPLEMENT THE FUNDING FOR AFFORDABLE HOUSING PERMITTED PURSUANT
TO SUBSECTIONS E AND F OF SECTION 14 OF ARTICLE 9 OF THE
CONSTITUTION OF NEW MEXICO; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"Affordable Housing Act".

Section 2. PURPOSE.--The purpose of the Affordable
Housing Act is to implement the provisions of Subsections E and
F of Section 14 of Article 9 of the constitution of New Mexico.

Section 3. DEFINITIONS.--As used in the Affordable
Housing Act:

A. "affordable housing" means residential housing
primarily for persons or households of low or moderate income;

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1 B. "authority" means the New Mexico mortgage
2 finance authority;

3 C. "building" means a structure capable of being
4 renovated or converted into affordable housing or a structure
5 that is to be demolished and is located on land donated for use
6 in connection with an affordable housing project;

7 D. "governmental entity" means a state, county or
8 municipality;

9 E. "household" means one or more persons occupying
10 a housing unit;

11 F. "housing assistance grant" means the donation by
12 a governmental entity of:

13 (1) land for construction of an affordable
14 housing project;

15 (2) an existing building for conversion or
16 renovation as affordable housing; or

17 (3) the costs of infrastructure necessary to
18 support affordable housing;

19 G. "infrastructure" includes infrastructure
20 improvements and infrastructure purposes;

21 H. "infrastructure improvement" includes, but is
22 not limited to:

23 (1) sanitary sewage systems, including
24 collection, transport, storage, treatment, dispersal, effluent
25 use and discharge;

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1 (2) drainage and flood control systems,
 2 including collection, transport, diversion, storage, detention,
 3 retention, dispersal, use and discharge;

4 (3) water systems for domestic purposes,
 5 including production, collection, storage, treatment,
 6 transport, delivery, connection and dispersal;

7 (4) areas for motor vehicle use for road
 8 access, ingress, egress and parking;

9 (5) trails and areas for pedestrian,
 10 equestrian, bicycle or other nonmotor vehicle use for access,
 11 ingress, egress and parking;

12 (6) parks, recreational facilities and open
 13 space areas to be used by residents for entertainment, assembly
 14 and recreation;

15 (7) landscaping, including earthworks,
 16 structures, plants, trees and related water delivery systems;

17 (8) electrical transmission and distribution
 18 facilities;

19 (9) natural gas distribution facilities;

20 (10) lighting systems;

21 (11) cable or other telecommunications lines
 22 and related equipment;

23 (12) traffic control systems and devices,
 24 including signals, controls, markings and signs;

25 (13) inspection, construction management and

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1 related costs in connection with the furnishing of the items
2 listed in this subsection; and

3 (14) heating, air conditioning and
4 weatherization facilities, systems or services, and energy
5 efficiency improvements that are affixed to real property;

6 I. "infrastructure purpose" means:

7 (1) planning, design, engineering,
8 construction, acquisition or installation of infrastructure,
9 including the costs of applications, impact fees and other
10 fees, permits and approvals related to the construction,
11 acquisition or installation of the infrastructure;

12 (2) acquiring, converting, renovating or
13 improving existing facilities for infrastructure, including
14 facilities owned, leased or installed by the owner;

15 (3) acquiring interests in real property or
16 water rights for infrastructure, including interests of the
17 owner; and

18 (4) incurring expenses incident to and
19 reasonably necessary to carry out the purposes specified in
20 this subsection;

21 J. "municipality" means an incorporated city, town
22 or village, whether incorporated under general act, special act
23 or special charter, incorporated counties and H class counties;

24 K. "qualifying grantee" means:

25 (1) an individual who is qualified to receive

1 assistance pursuant to the Affordable Housing Act and is
2 approved by the governmental entity; and

3 (2) a governmental housing agency, regional
4 housing authority, tribal housing agency, corporation, limited
5 liability company, partnership, joint venture, syndicate,
6 association or nonprofit organization that:

7 (a) is organized under state, local or
8 tribal laws and can provide proof of such organization;

9 (b) if a nonprofit organization, has no
10 part of its net earnings inuring to the benefit of any member,
11 founder, contributor or individual; and

12 (c) is approved by the governmental
13 entity; and

14 L. "residential housing" means any building,
15 structure or portion thereof that is primarily occupied, or
16 designed or intended primarily for occupancy, as a residence by
17 one or more households and any real property that is offered
18 for sale or lease for the construction or location thereon of
19 such a building, structure or portion thereof. "Residential
20 housing" includes congregate housing, manufactured homes and
21 housing intended to provide or providing transitional or
22 temporary housing for homeless persons.

23 Section 4. ELIGIBILITY REQUIREMENTS--NON-INDIVIDUAL AND
24 INDIVIDUAL QUALIFYING GRANTEEES.--

25 A. To be eligible to receive lands, buildings and

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1 infrastructure pursuant to Section 14 of Article 9 of the
2 constitution of New Mexico, a non-individual qualifying grantee
3 shall:

4 (1) have a functioning accounting system that
5 is operated in accordance with generally accepted accounting
6 principles or has designated an entity that will maintain such
7 an accounting system consistent with generally accepted
8 accounting principles;

9 (2) have among its purposes significant
10 activities related to providing housing or services to low- or
11 moderate-income persons or households; and

12 (3) if it has significant outstanding or
13 unresolved monitoring findings from either the authority or its
14 most recent independent financial audit, have a certified
15 letter from the authority or auditor stating that the findings
16 are in the process of being resolved.

17 B. To be eligible to receive lands, buildings and
18 infrastructure pursuant to Section 14 of Article 9 of the
19 constitution of New Mexico, an individual qualifying grantee
20 shall meet the requirements established by the authority
21 pursuant to the Affordable Housing Act.

22 Section 5. STATE, COUNTY AND MUNICIPALITIES--
23 AUTHORIZATION FOR AFFORDABLE HOUSING.--The state, a county or a
24 municipality may donate land for construction of affordable
25 housing or an existing building for conversion or renovation

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1 into affordable housing or may provide or pay the costs of
 2 infrastructure necessary to support affordable housing
 3 projects.

4 Section 6. REQUIREMENT FOR SPECIFIC LAW AUTHORIZING A
 5 HOUSING ASSISTANCE GRANT FROM STATE.--

6 A. The specific grant of authority created in the
 7 Affordable Housing Act is the prior approval required pursuant
 8 to Article 4, Section 14 of the constitution of New Mexico to
 9 allow the state to provide affordable housing assistance.

10 B. Funding pursuant to this grant of authority
 11 shall be appropriated to the department of finance and
 12 administration for disbursement by the authority to a
 13 qualifying grantee in accordance with rules promulgated by the
 14 authority.

15 C. Rules adopted by the authority may include
 16 provisions for matching or using local, private or federal
 17 funds in connection with a specific grant, but matching or
 18 using federal funds shall not be prohibited.

19 D. The authority shall seek comment from the
 20 Mortgage Finance Authority Act oversight committee prior to its
 21 adoption of rules pursuant to this section.

22 Section 7. REQUIREMENT FOR ENACTMENT OF AN ORDINANCE BY
 23 COUNTY OR MUNICIPALITY AUTHORIZING HOUSING ASSISTANCE GRANTS.--

24 A. A county or municipality may provide housing
 25 assistance grants pursuant to Section 14 of Article 9 of the

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1 constitution of New Mexico after enactment by its governing
2 body of an ordinance authorizing grants, stating the
3 requirements of and purposes of the grants and authorizing
4 transfer or disbursement to a qualifying grantee only after a
5 budget is submitted to and approved by the governing body. The
6 ordinance may provide for matching or using local, private or
7 federal funds either through direct participation with a
8 federal agency pursuant to federal law or through indirect
9 participation throughout the authority. The ordinance shall
10 comply with rules promulgated by the authority pursuant to
11 Section 8 of the Affordable Housing Act.

12 B. A school district may transfer land owned by the
13 school district to a county or municipality to be further
14 granted as part or all of an affordable housing grant if the
15 school district and the governing body of the county or
16 municipality enter into a contract that provides the school
17 district with a negotiated number of affordable housing units
18 that will be reserved for employees of the school district.

19 C. The governing board of a public post-secondary
20 educational institution may transfer land owned by that
21 institution to a county or municipality; provided that:

22 (1) the property transferred shall be granted
23 by the county or municipality as part or all of an affordable
24 housing grant; and

25 (2) the governing board of the public post-

1 secondary educational institution and the governing body of the
2 county or municipality enter into a contract that provides the
3 public post-secondary educational institution with affordable
4 housing units.

5 D. As used in this section, "public post-secondary
6 educational institution" means a state university or a public
7 community college.

8 Section 8. PROVISIONS TO ENSURE SUCCESSFUL COMPLETION OF
9 AFFORDABLE HOUSING PROJECTS.--

10 A. State, county and municipal housing assistance
11 grants pursuant to the Affordable Housing Act shall be applied
12 for and awarded to qualifying grantees pursuant to the rules
13 promulgated by the authority subject to the requirements of
14 that act.

15 B. The authority shall adopt rules covering:

16 (1) procedures to ensure that qualifying
17 grantees meet the requirements of the Affordable Housing Act
18 and rules promulgated pursuant to that act both at the time of
19 the award and through the term of the grant;

20 (2) establishment of an application and award
21 timetable for housing assistance grants to permit the selection
22 of the potential qualifying grantees prior to January of the
23 year in which the grants would be made;

24 (3) contents of the application, including an
25 independent evaluation of the:

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- 1 (a) financial and management stability
- 2 of the applicant;
- 3 (b) demonstrated commitment of the
- 4 applicant to the community;
- 5 (c) cost-benefit analysis of the project
- 6 proposed by the applicant;
- 7 (d) benefits to the community of a
- 8 proposed project;
- 9 (e) type or amount of assistance to be
- 10 provided;
- 11 (f) scope of the affordable housing
- 12 project;
- 13 (g) substantive or matching contribution
- 14 by the applicant to the proposed project; and
- 15 (h) performance schedule for the
- 16 qualifying grantee with performance criteria;
- 17 (4) a requirement for long-term affordability
- 18 of a state, county or municipal project so that a project
- 19 cannot be sold shortly after completion and taken out of the
- 20 affordable housing market to ensure a quick profit for the
- 21 qualifying grantee;
- 22 (5) a requirement that a grant for a state or
- 23 local project must impose a contractual obligation on the
- 24 qualifying grantee that the housing units in a state or local
- 25 project pursuant to the Affordable Housing Act be occupied by

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1 low- or moderate-income households;

2 (6) provisions for adequate security against
 3 the loss of public funds or property in the event that a
 4 qualifying grantee abandons or otherwise fails to complete a
 5 project;

6 (7) a requirement for review and approval of a
 7 housing grant project budget by the grantor before any
 8 expenditure of grant funds or transfer of granted property;

9 (8) a requirement that, unless the period is
 10 extended for good cause shown, the authority shall act on an
 11 application within forty-five days of the date of receipt of an
 12 application that the authority deems to be complete and, if not
 13 acted upon, the application shall be deemed approved;

14 (9) a requirement that a condition of grant
 15 approval be proof of compliance with all applicable state and
 16 local laws, rules and ordinances;

17 (10) provisions defining "low- and moderate-
 18 income" and setting out requirements for verification of income
 19 levels;

20 (11) a requirement that a county or
 21 municipality that makes a housing assistance grant shall have
 22 an existing valid affordable housing plan or housing elements
 23 contained in its general plan; and

24 (12) a requirement that the governmental
 25 entity enter into a contract with a qualifying grantee

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1 consistent with the Affordable Housing Act, which contract
2 shall include remedies and default provisions in the event of
3 the unsatisfactory performance by the qualifying grantee.

4 C. In addition to the rulemaking mandated in
5 Subsection B of this section, the authority may adopt
6 additional rules to carry out the purposes of the Affordable
7 Housing Act. Rulemaking procedures pursuant to the Affordable
8 Housing Act shall:

9 (1) provide a public hearing in accordance
10 with the state Administrative Procedures Act; and

11 (2) require concurrence in a rule having
12 application to local government by both the New Mexico
13 municipal league and the New Mexico association of counties.

14 Section 9. EMERGENCY.--It is necessary for the public
15 peace, health and safety that this act take effect immediately.